IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

MISC. COMPANY APPLICATION NO.788 OF 2003

Mr.D.S. Jadhav .... Applicant
versus
Official Liquidator .... Respondent

Shri A.V. Chatphule i/b. L.R. Castellino for the applicants.
Shri S.C. Gupta, O.L. present.

CORAM: S.U. KAMDAR, J.

DATE : 27TH JANUARY, 2005.

P.C. :

1. The present application has been filed under rule 308 and 309 of the Company Court Rules. The applicant in the present case was appointed as an additional staff in the post of Junior Assistant in the office of Official Liquidator. On certain complaints he was suspended from the service with effect from 1992. There was also a criminal

prosecution lodged against the applicant. However in the said criminal prosecution the applicant was acquitted by the learned Metropolitan Magistrate court. Pursuant thereby an order was passed by the Company judge on 9.4.2003 whereby the applicant has been reinstated in service. While passing the order of reinstatement the learned judge has deprived the applicant of the backwages towards the employment during the said period and further directed him to refund the amount of subsistence allowance enjoyed by him during the said period when he was under suspension. After being reinstated the Official Liquidator has reinstated him in the post of Junior Assistant on the basis of revised pay-scale of Rs.30550-75-3950-80-4590 without giving him the benefits of increments during the said period when he was suspended. The present application is therefore filed by the applicant for refixation of pay-scale by including the increments which have been granted to the other similar continued staff in the cadre of Junior Assistant. It is the contention of the applicant that on his reinstatement he should be given a regular pay-scale which otherwise he would

have been entitled to but for his suspension.

2. It is contended by the applicant that at no point of time any punishment was inflicted nor any departmental proceedings were initiated. He was suspended pursuant to the criminal charge and criminal trial. He has been acquitted in the said criminal charge by the magistrate. In view of his acquittal this court has reinstated him without any departmental inquiry. However, the backwages were denied only on the ground that he was working elsewhere during the period of his suspension. He was also directed to refund the subsistence allowance.

3. On the other hand the learned official liquidator has contended that the applicant is not entitled to any increment in salary during the period of his suspension. According to him because he was under suspension the increment which is granted to other staff in the same cadre cannot be extended to the applicant. The learned official liquidator has contended that even if an employee is under a long

leave then in such event when he resumes he cannot be given increment in the pay-scale which other staff enjoyed during the period in service.

4. I have considered the rival submissions. I find that the contentions raised by the learned official liquidator is devoid of any merits. In my opinion once the applicant is reinstated in his job he is in employment continuously and there is no question of denying him the increment which otherwise he would have been entitled for but for his suspension. In the present case there was no departmental enquiry and consequently no punishment was imposed on the applicant herein. In the aforesaid view of the matter to denying the applicant his regular increment in his pay-scale which is admittedly granted to other staff similarly situated in the same cadre would amount to unjustifying inflicting punishment on the applicant herein. It would also amount to inflicting punishment without enquiry and without passing any disciplinary order. In my opinion it is a settled law that no employee can be adversely affected nor any benefits can be

reprieved to him without a proper departmental enquiry and inflicting the punishment in respect thereof. In view of the fact that there is no punishment inflicted on the applicant in the regular course of departmental enquiry the applicant is entitled to all benefits of increments which is granted to other employees working on the same post. In the aforesaid circumstances in my opinion to deny the applicant his increments would be highly unjust. In exercise of power under section 308 and 309 of the Company Court Rules when the applicant has been reinstated by this court consequently in a matter of course, he will be entitled to his fixation of pay-scale on reinstatement as if he would in employment throughout the period from 1992-2003 despite the fact that he was under suspension for a long period of time from 1992-2003. In the aforesaid circumstances, I make the petition absolute in terms of prayer clause (b). The Official Liquidator is directed to refix the pay-scale of the applicant within a period of three weeks from today.

sd/-

****